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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved On: 2nd November, 2023

Pronounced On: 5th December, 2023

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CRL.M.C. 1303/2014 & CRL.M.A. 4416/2014 (Stay)

BIMALENDU GHOSH DASTIDAR

..... Petitioner

Through: Mr. Aseem and Mr. Amit Saxena,
Advocates.

versus

STATE & ORS

..... Respondents

Through: Mr. Aman Usman, APP for the State.
SI Amit Kumar Dagar, Sec-V, EOW.
Mr. M.L. Yadav, Advocate for R-2 to
4.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenges the judgment dated 27.09.2013 passed by learned Additional Sessions Judge-04 and Special Judge (NDPS), South-East, Saket in CR No. 59/2012 and 61/2012, whereby the proceedings pending in the Court of learned Chief Metropolitan Magistrate, South-East, Saket, arising out of FIR No. 171/2006 under Sections 420/467/468/471/120B of the Indian Penal Code, 1860 ('IPC'), registered at P.S. C.R. Park (investigated by Crime Branch, EOW) were stayed till the conclusion of



proceedings in Probate Case No. 90 of 2003; 386/06 pending before the Court of learned Additional District Judge, Central, Tis Hazari, Delhi.

2. The facts necessary for adjudication of the present petition are as under:

- i. At the instance of the present petitioner, FIR No. 171/2006 under Sections 420/467/468/471/120B of the IPC, was registered at P.S. C.R. Park (investigated by Crime Branch, EOW).
- ii. It is the case of the petitioner that his father, late Sh. AC Ghosh had bequeathed the property bearing no. G 1224, C.R. Park, New Delhi by way of a will dated 07.08.1989 and a codicil dated 31.02.1989 in equal proportions to his wife Smt. Usha Ghosh Dastidar and the present petitioner/Sh. Bimalendu Ghosh Dastidar.
- iii. It is stated that late Sh. A.C. Ghosh passed away on 16.12.1996 and his wife Smt. Usha Ghosh passed away on 27.05.1998. It is the case of the petitioner that his mother Smt. Usha Ghosh left behind her will dated 12.01.1998 bequeathing her share in the said property in favour of the present petitioner.
- iv. It is the case of the petitioner that respondent no.2 filed a probate petition in 2003 seeking grant of probate of will dated 10.05.1996 alleged to have been executed by late Sh. AC Ghosh in the Court of the learned District Judge, Tis Hazari. On being served with the notices of the said probate case, the petitioner came to know about the aforesaid forged and fabricated will.
- v. That report from GQD was sought and it came on record that the will before the Probate Court was allegedly forged. After investigation in the aforesaid FIR, the chargesheet was filed against respondents no. 2



- to 4. (respondents no. 3 and 4 were witnesses to the alleged forged will).
- vi. The present respondents 2 to 4 filed a petition, i.e., CRL.MC. 3234/2007, which was dismissed as withdrawn *vide* order dated 11.10.2007.
 - vii. Subsequently, an application under Section 309 of the Cr.P.C. was filed by the respondents before the Court of learned ACMM seeking stay of proceedings till the decision of the Civil Court in the Probate Case. The said application was dismissed *vide* order dated 31.08.2009.
 - viii. The aforesaid order dated 31.08.2009 was challenged by respondents no. 2 to 4 before this Court *vide* CRL.M.C. 3638/2009. The said petition was withdrawn with permission to file an appropriate application before learned Session Court *vide* order 23.10.2009. In pursuance of the aforesaid order, a revision petition against the order dated 31.08.2009 was filed before the learned Additional Sessions Judge, which was disposed of *vide* order dated 18.02.2010 holding that the trial would continue but the learned Trial Court would not pass a final order till the decision of the Probate Case.
 - ix. Respondent no.4 herein challenged the said order dated 18.02.2010 in CRL.M.C. 29/2010 and sought quashing of FIR and the chargesheet and the same was dismissed as withdrawn *vide* order 08.01.2010.
 - x. The aforesaid order 18.02.2010 passed by learned ASJ in the revision petition challenging the order dated 31.08.2009 dismissing the application under Section 309 of the CrPC, was challenged by respondent no.2 herein *vide* CRL.M.C. 837/2010, which was dismissed



vide order dated 17.03.2010 passed by a learned Single Judge of this Court.

- xi. The learned Trial court, after hearing arguments directed framing of charges *vide* order dated 05.02.2011 and formal charges were framed on 18.02.2011 under Sections 120B/420/467/468/471 of the IPC.
- xii. Thereafter, respondent no. 3 filed CRL.MC. 440/2011 before this Court seeking quashing of FIR and consequent chargesheet. Similarly, respondents no. 2 and 4 also filed CRL.REV. P. 288/2011 and 196/2011, respectively challenging the order framing charge. The said three petitions were disposed of by a learned predecessor bench of this Court *vide* order dated 08.10.2012 with liberty to approach the learned Sessions Court.
- xiii. Pursuant to the aforesaid order, respondents no. 2 to 4 approached the Sessions Court by way of revision petitions, which were disposed of by the learned ASJ *vide* the impugned judgment dated 27.09.2013.

3. Learned counsel for the petitioner submitted that the learned ASJ has committed a grave error and illegality by exceeding his jurisdiction and superseding order dated 17.03.2010 passed by a learned Single Judge of this Court in CRL.MC 837/2010, wherein it was recorded that '*Appropriate course for the petitioner would be :o get the Probate proceedings expedited, rather than to get the criminal proceedings stalled or postponed.*'. It was submitted that despite the specific orders by this Court, the learned ASJ passed the impugned judgment. Learned counsel for the petitioner placed reliance on **Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., (2005) 4 SCC 370**, wherein it was held as under:



“24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.



27. The learned author has referred to *Sheffield City Council v. Yorkshire Water Services Ltd.* [(1991) 1 WLR 58 : (1991) 2 All ER 280], WLR at p. 71, where it was held as under:

“Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken by judges in developing the common law. ‘... the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society’.”

28. In *S.J. Grange Ltd. v. Customs and Excise Commrs.* [(1979) 2 All ER 91 : (1979) 1 WLR 239] while interpreting a provision in the Finance Act, 1972, Lord Denning observed that if the literal construction leads to impracticable results, it would be necessary to do little adjustment so as to make the section workable. Therefore, in order that a victim of a crime of forgery, namely, the person aggrieved is able to exercise his right conferred by law to initiate prosecution of the offender, it is necessary to place a restrictive interpretation on clause (b)(ii).

29. Dr. Singhvi has also urged that since we are dealing with a penal provision it should be strictly construed and in support of his proposition he has placed reliance upon a Constitution Bench decision in *Tolaram Relumal v. State of Bombay* [(1955) 1 SCR 158 : 1954 Cri LJ 1333] wherein it was held that it is well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty and it is not competent for the court to stretch out the meaning of expression used by the legislature in order to carry out the intention of the legislature. The contention is that since Section 195(1)(b)(ii) affords protection from private prosecution, it should not be given a restrictive interpretation to curtail its scope. We are unable to accept such broad proposition as has been sought to be urged. In *Craies on Statute Law* (1971 Edn., Chapter 21), the principle regarding penal provisions has been stated as under:

“But penal statutes must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptance would comprehend. ... ‘... But where the thing is



brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common-sense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument’.”

32. 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 the old Code, the following observations made by a Constitution Bench in *M.S. Sheriff v. State of Madras* [1954 SCR 1144 : AIR 1954 SC 397 : 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

“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.”

Reliance was further placed on **Syed Askari Hadi Ali Augustine Imam & Ors. v. Dte (Delhi Administration) & Ors., (2009) 5 SCC 528.**

4. Learned counsel for respondents no. 2 to 4 submitted that the impugned judgment does not overreach the order dated 17.03.2010 passed by a learned Single Judge of this Court in CRL.MC. 837/2010 as in a subsequent order passed on 08.10.2012, a learned Single Judge of this Court had given liberty to respondents no. 2 to 4 to agitate the issue regarding continuation of criminal proceedings in view of the pendency of the probate proceedings, instituted at an earlier point in time.

5. It was submitted that order dated 17.03.2010 was passed before charges were framed by the learned Trial Court and the impugned judgment was passed in the context of framing of charge. It was further pointed out that the sequence of orders passed by this Court has been duly considered in the impugned judgment, in paragraphs 6 to 8 which read as under:

“6. It may be noted that accused persons filed CrI. M.C No. 3234/07 before High Court of Delhi praying for quashing of the FIR which was dismissed as withdrawn vide orders dated 11.10.2007. An application under Section 309 Cr.P.C for stay of the proceedings till the decision of the Civil court in Probate case filed by revisionists was dismissed by Learned Metropolitan Magistrate vide orders dated 31.08.2009.



Revisionists, challenged the said order dated 31.08.2009 vide CrI. M.C No. 3638/2009, which was withdrawn with the permission to file appropriate application before the Sessions Court on 23.10.2009. Thereafter, revisionists filed revision petition against the orders which were disposed off vide order dated 18.02.2010, wherein Learned ASJ held that the “Trial Court shall not pass final orders till the decision of the probate case.” Respondent-Amarnath Ghosh (A-1) filed a CrI MC No. 837/2010 challenging order of Ld. ASJ, which was dismissed vide order dated 17.03.2010.

7. On 05.02.2011, Learned Trial Court, after hearing the arguments directed framing of charges and on 18.02.2011, charges Under Section 420/467/468/471 all r/w 120-B IPC were framed. Charges framed against revisionist, in nutshell, are that they entered into a conspiracy of forging the Will dated 10.05.1996 of late Sh. Amulya Chandra Ghosh for the purpose of cheating, his brother-the complainant and in furtherance of which they forged the aforesaid Will and got it registered with sub-registrar VII inducing him to believe the existence of the Will.

8. Revisionist/Dr. Prasant Chakroborty filed a CrI.M.C No. 440/2011 praying for quashing of FIR and charges. Revisionist/Ravi Mohan Anand filed a Criminal Revision 196/2011 and Amarnath Ghosh also filed a CrI. Rev. No. 228/2011 challenging the order of framing of charges, v/herein the Hon’ble High Court on 05.05.2011 was “pleased to stay the proceedings” and all these petitions were disposed of on 08.10.2012, whereby liberty was granted by the High Court to the revisionists to approach Sessions Court. Hence, these two separate revision petitions are preferred by the three accused, before this Court.”

6. Learned counsel for respondents no. 2 to 4 further submitted that the petitioner has been delaying the proceedings in the Probate Case initiated on behalf of respondent no. 2. It was submitted that the petitioner has been proceeded *ex-parte* twice in the said proceedings, on 28.02.2005 and 04.12.2009. It was further argued that the petitioner has been taking adjournments and ensuring that the case does not reach its conclusion. It was submitted that respondent no.2 has concluded the evidence in the probate proceedings, however, the petitioner has not even completed his evidence



after passage 14 years since 2009. Learned counsel further submitted that the dates of filing of Probate Case and the criminal complaint are most relevant to decide whether the criminal proceedings should be kept in abeyance till the conclusion of the probate case. Reliance was placed on **Sardool Singh & Anr. v. Smt. Nasib Kaur, 1987 Supp SC 146, Ravinder Kumar Jain & Ors. v. State & Anr.**, order dated 10.09.2010 passed by a coordinate bench in **CRL.MC. 620/2009, Usha Chakraborty & Anr. v. State of West Bengal & Anr., 2023 INSC 86** and **State of Andhra Pradesh v. Golconda Linga Swamy & Anr., 2004 SCC OnLine SC 747.**

7. Heard learned counsel for the parties and perused the record.
8. The impugned judgment was passed in revision petitions challenging the order of framing of charge by learned Metropolitan Magistrate. The learned ASJ, while passing the impugned judgment, was exercising the powers under Section 399 read with Section 401 of the CrPC. The learned ASJ, while exercising such power, was examining the correctness, legality or propriety of the order challenged by respondents no.2 to 4. The impugned judgment, without examining the order on charge proceeded to exercise power under Section 309 of the CrPC.
9. Section 399 of the CrPC provides that in case of any proceedings, the record of which has been called by the learned Sessions Judge, the latter may exercise any of the powers which may be exercised by the High Court under Section 401(1) of the CrPC, which provides as under:

“401. High Court’s powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections



386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.”

Section 386 of the CrPC lays down the powers of the appellate court, in the following manner:

“386. Powers of the Appellate Court.—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—

(c) in an appeal for enhancement of sentence—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:



Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

Section 389 of the CrPC provides for suspension of sentence pending appeal and release of the appellant on bail. Sections 390 and 391 of the CrPC provide for arrest of the accused in an appeal from acquittal and for power of the appellate court to take further evidence, respectively. A perusal of the aforesaid provisions demonstrates that the learned ASJ, while examining the petitions challenging the order on charge, had no jurisdiction to pass an order under Section 309 of the CrPC.

10. In the aforesaid context, it is relevant to note that in CRL.MC 837/2010, a learned Single Judge, *vide* order dated 17.03.2010, held as under:

“Pendency of Probate proceedings is a ground put forth for the stay of the criminal proceedings in FIR No. 171/2006 under Sections 420/467/468/471/120-B of IPC registered at PS C.R. Park, New Delhi. Revisional Court in the impugned order of 18th February, 2010 has declined to do so by giving the following reasoning:-

“In the present case the criminal case is at the stage of charge and it would definitely take some time before the case would come at the stage of evidence. The Probate case is stated to be at the stage of evidence. I am of the view that it would not serve any purpose if the proceedings before the criminal court are stayed at this stage. The passage of time make evidence stale and insipid. To avoid that it would be appropriate if the Trial Court proceed with the criminal trial as well



simultaneously with the civil proceedings because there is no bar at proceeding with the criminal trial when the civil proceedings are also pending. However, I am also of the view that the Judgment in Probate case would be of a binding nature and it may have its legal repercussions on the proceedings in the criminal court. Therefore, it would be more appropriate if the criminal proceedings are allowed to continue but the Trial Court refrain from hearing final argument and disposal of the case. The Trial Court can continue with the trial but shall not pass any final order till the decision of the Probate case. After the Probate case is decided either of the party⁶ may file certified copy thereof before the Trial Court in the criminal proceedings which shall take into consideration the decision of a Probate Court and thereafter proceed as per the mandate of law.”

Counsel for the petitioner relies upon decisions reported in 1984 RLR 125; 1987 (Supp) Supreme Court Cases 146 and 2009 [3] JCC 1705 to contend that Probate proceedings were initiated first and are at fairly advanced stage and have important bearing upon the criminal proceedings which are at the initial stage of charge.

After having heard learned counsel of the petitioner and upon perusal of the decisions cited, this Court finds that the mandate of Section 309 of the Code of Criminal Procedure is that the trial in the criminal proceedings has to be expeditious and for valid reasons only, the criminal proceedings should be adjourned. Learned counsel for the petitioner could not find any fault with the aforesaid reasoning of the trial court and I find no reason to take a different view than the one taken by the trial court in the impugned order. Appropriate course for the petitioner would be to get the Probate proceedings expedited, rather than to get the criminal proceedings stalled or postponed.



In the light of the aforesaid, this petition and the pending application are dismissed while refraining to express any opinion on the merits of the case.”

The aforesaid order clearly closed the issue between the parties with respect to postponement of the criminal proceedings, awaiting the outcome of the probate proceedings. The said order was passed after examining Section 309 of the CrPC. Since the aforesaid order was not challenged, the same has attained finality. The learned ASJ, while dealing with the aforesaid order in the impugned judgment, observed as under:

“28. Earlier on filing of an application u/s 309 Cr. P.C , the pronouncement of Judgment in this case was stayed and Trial Court is restrained to finally hear and dispose of the case vide order dated 18.02.2010 of Learned ASJ. It may be noted that even the said order observed that “the Judgment in the Probate case would be of binding nature and may have its legal repercussions on criminal case.” The said order was maintained by the High Court on 17.03.2010. The reason, why a fresh conclusion is required to be drawn is that the orders dated 18.02.2010 and 17.03.2010 were passed before framing of the charge and now vide order dated 05.02.2011, Trial Court has ordered to frame charges. Now, after sifting and weighing material on record, this Court has to see the legality and propriety of the impugned order. Legal position is well settled that as the matter proceeds to the next stage, all the earlier conclusions stand effaced and are required to be redrawn in accordance with Law (reliance may be placed on para 41 “Nupur Talwar vs CBI (2013) 1 SCC 465”). Now, the challenge in these petitions is to the framing of charges, therefore, while exercising revisional jurisdiction, this Court is also called upon to consider the relevance of Judgment in probate case u/s 41 of Indian Evidence Act and its effect and impact on framing of charges against accused and likelihood of embarrassment to them in continuation of trial.”

11. The aforesaid observation made by the learned ASJ is not tenable. There was no fresh application under Section 309 of the CrPC which was



filed after framing of charge by the learned Metropolitan Magistrate, requiring a consideration of the applicability of the said section in the facts of the case. Further, in any case, the said power vests with the concerned Trial Court and not with the learned Session Court in revisional jurisdiction. As pointed out hereinabove, the present issue of exercise of power under Section 309 of the CrPC was not under challenge before the learned ASJ in petitions filed by respondents no. 2 to 4.

12. In view of the above discussion, the impugned judgment is not sustainable in law and therefore, is set aside. Since the revision petitions were filed with respect to challenge of an order framing charge by the learned Metropolitan Magistrate and the said issue was not decided, the matter is remanded back to the learned ASJ for deciding the said petitions in accordance with law.

13. The parties are directed to appear before the learned ASJ on 18.12.2023, at 02:30 PM.

14. The petition is allowed and disposed of with the above directions.

15. Pending application, if any, also stand disposed of.

16. Copy of the judgment be sent to the concerned learned Sessions Court for necessary information and compliance.

17. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

DECEMBER 05, 2023/nk