Prem Raj Vs Poonamma Menon & Anr.

Court: Supreme Court Of India

Date of Decision: April 2, 2024

Acts Referred: Negotiable Instruments Act, 1881 â€" Section 138

Hon'ble Judges: Sanjay Karol, J; Aravind Kumar, J

Bench: Division Bench

Advocate: K.Parameshwar, Nishe Rajen Shonker, M. P. Vinod

Final Decision: Allowed

Judgement

Sanjay Karol, J

1. Leave granted.

2. Appellant herein challenges judgment and order dated 23rd January, 2018 passed in Crl.R.P. No.1111 of 2011 [Ã¢â‚¬Ëœ Impugned JudgmentÃ¢â‚¬â„¢],

whereby the High Court of Kerala allowed, only in part, his Revision Petition against the judgment and order of the learned Additional Sessions Judge,

Thrissur, [Ã¢â‚¬Ëœ Lower Appellate CourtÃ¢â‚¬â„¢] dated 11th January, 2011, in Criminal Appeal No.673 of 2007, which, in turn, upheld his conviction, as

handed down by the learned Judicial First Class Magistrate [Ã¢â‚¬Ëœ Trial CourtÃ¢â‚¬â„¢] vide order dated 14th August, 2007 in CC No.51 of 2003, under

Section 138 of the Negotiable Instruments Act, 1881 [Ã¢â‚¬Ëœ N.I. ActÃ¢â‚¬â„¢].

3. The sole issue that we are required to consider is, whether, a criminal proceeding can be initiated and the accused therein held guilty with natural

consequences thereof to follow, in connection with a transaction, in respect of which a decree by a competent Court of civil jurisdiction, already stands

passed.

4. The facts necessary to put into perspective the issue in the present appeal are:-

4.1 The Appellant borrowed Rs.2,00,000/- from the Complainant, K.P.B Menon Ã¢â‚¬Å“Sreyes,"" with the promise that he would repay it on demand.

4.2 On receipt of such demand, he issued a cheque dated 30th June, 2002 for the said amount from the South Indian Bank, encashment thereof was to

be through Canara Bank, Irinjalakuda Branch, to which the cheque was sent through the post with a covering letter dated 24th September, 2002.

4.3 It was dishonoured due to insufficient funds and Ã¢â‚¬Ëœpayments stopped by drawerÃ¢â‚¬â„¢. The Complainant came to know of such dishonour and

issued a notice of demand dated 22nd December, 2002. Accounting for no action on the part of the appellant, the complaint, the subject matter of the

instant proceedings, came to be filed.

5. Equally, though, the appellant (accused) had filed Original Suit No.1338 of 2002. The five parties impleaded as defendants were, (i) K.P. Bhaskara

Menon; (ii) K.P. Vipinendra Kumar [2nd defendant]; (iii) Praveen Menon; (iv) The Manager South Indian Bank Limited Kathikudam, Via Koratty,

Trichur; and (v) N.T. Raghunandanan. The prayers made therein were to, (a) declare cheque No.386543 of the South Indian Bank Limited,

Kathikudam, as a security cheque; (b) issue mandatory injunction directing the 1st defendant to return the said cheque; and (c) issue a permanent

prohibitory injunction restraining defendants 1 to 4 named hereinabove from taking any steps to encash the said cheque.

5.1 The Additional District Munsif, Irinjalakuda, decreed the Suit on 11th April, 2003 in favour of the plaintiff (accused). The Suit in respect of

defendant No.4, namely the Manager, South Indian Bank, was dismissed and the Suit was wholly decreed against the remaining defendants.

5.2 Defendant No.1 filed an appeal before the Additional Subordinate Judge, Irinjalakuda in C.M.A.No.6/2006. In its judgment dated 30th January,

2007, the Court observed that Ã¢â‚¬Å“The lower court correctly analysed the facts and arrived at the right conclusion. I find no reason to interfere the

order of the lower court. Hence I dismissed this appeal.Ã¢â‚¬â€‹

6. Therefore, it appears from the record that the very same cheque was in issue before the Civil Court and also the Court seized of the Section 138

N.I. Act complaint.

The conclusions drawn by the Courts below, subject matter of the instant lis, are as under:

6.1 The Trial Court convicted the appellant herein to undergo simple imprisonment for one year as well as pay compensation of Rs.2 lakhs in default

whereof, he was to undergo further simple imprisonment for six months. The determination of the issues, i.e., whether the decree passed by the

Munsif Court would be binding on it, is of note. It was observed that a Court exercising jurisdiction on the criminal side is not subordinate to the Civil

Court. Further, it was held Ã¢â‚¬Å“That order was an ex-parte order as far as criminal complaint is concerned the order of injunction issued cannot be

granted and the hands of the criminal court cannot be fettered by the civil courtÃ¢â‚¬â€‹.

6.2 The First Appellate Court framed primarily one point for consideration Ã¢â‚¬" whether the cheque was issued against a legally enforceable debt,

thereby attracting the offence under Section 138 of the N.I. Act. This point was held against the appellant and therefore, the conviction handed down

by the Court below, accordingly confirmed.

7. The High Court, in revision, observed that no perversity could be indicated in the concurrent findings of the Trial Court and First Appellate Court.

The same was dismissed.

8. We find the manner in which this matter has travelled up to this Court to be quite concerning. We fail to understand as to how a civil as well as

criminal course could be adopted by the parties involved, in respect of the very same issue and transaction, in these peculiar facts and circumstances.

9. In advancing his submissions, Mr. K. Parameshwar, learned counsel appearing for the appellant, placed reliance on certain authorities of this Court.

In M/s. Karam Chand Ganga Prasad & Anr. vs. Union of India & Ors. (1970) 3 SCC 694, this Court observed that:

Ã¢â‚¬Å“Ã¢â‚¬Â¦Ã¢â‚¬Â¦.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.Ã¢â‚¬â€‹

In K.G. Premshanker vs. Inspector of Police & Anr (2002) 8 SCC 87., a Bench of three learned Judges observed that, following the M.S. Sheriff vs.

State of Madras AIR 1954 SC 397, no straight-jacket formula could be laid down and conflicting decisions of civil and criminal Courts would not be a

relevant consideration except for the limited purpose of sentence or damages.

10. We notice that this Court in Vishnu Dutt Sharma vs. Daya Sapra (Smt.) (2009) 13 SCC 729, had observed as under:

Ã¢â‚¬Å“26. It is, however, significant to notice a decision of this Court in Karam Chand Ganga Prasad v. Union of India (1970) 3 SCC 694, wherein it was

categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled thereinÃ¢â‚¬Â¦Ã¢â‚¬â€‹

This Court in Satish Chander Ahuja vs. Sneha Ahuja (2021) 1 SCC 414 considered a numerous precedents, including Premshanker (supra) and

Vishnu Dutt Sharma (supra), to opine that there is no embargo for a civil court to consider the evidence led in the criminal proceedings.

The issue has been laid to rest by a Constitution Bench of this Court in Iqbal Singh Marwah vs. Meenakshi Marwah (2005) 4 SCC 370 :

Ã¢â‚¬Å“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)

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

(Emphasis Supplied)

11. The position as per Premshanker (supra) is that sentence and damages would be excluded from the conflict of decisions in civil and criminal

jurisdictions of the Courts. Therefore, in the present case, considering that the Court in criminal jurisdiction has imposed both sentence and damages,

the ratio of the above-referred decision dictates that the Court in criminal jurisdiction would be bound by the civil Court having declared the cheque,

the subject matter of dispute, to be only for the purposes of security.

12. In that view of the matter, the criminal proceedings resulting from the cheque being returned unrealised due to the closure of the account would be

unsustainable in law and, therefore, are to be quashed and set aside. Resultantly, the damages as imposed by the Courts below must be returned to the

appellant herein forthwith.

13. The appeal is allowed in the aforesaid terms. Hence, the judgment and order passed by Additional Sessions Judge, Thrissur, in Criminal Appeal

673 of 2007, which upheld the conviction, as handed down by the learned Judicial First Class Magistrate in CC No. 51 of 2003, which came to

affirmed by the High Court of Kerela in Crl.R.P.No.1111 of 2011 is quashed and set aside. Pending application(s), if any, shall stand disposed of.