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(1988) MPJR 124

Madhya Pradesh High Court

Case No: C.R. No. 345 of 1986

New Bank of India	APPELLANT
Vs	
Radhakishan and Company and Others	RESPONDENT

Date of Decision: July 30, 1988

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 3, 151
- Constitution of India, 1950 - Article 20
- Penal Code, 1860 (IPC) - Section 407, 420

Citation: (1988) MPJR 124

Hon'ble Judges: S.K. Dubey, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.K. Dubey, J.

This revision against the order dated 2nd August, 1986, passed in Civil Suit No. 11-A/83, by the Xth Additional Judge, to the court of District Judge, Indore, whereby the trial court stayed the proceedings of the Civil Suit till pendency of the Criminal Proceedings pending against the defendant Nos. 1, 2, 3 and 6 under Sections 407 and 420 IPC. The plaintiff filed a suit for recovery of Rs. 2,675,754.70 on the ground that the bill of exchange issued by the defendant No. 1 were dishonoured. It was, however, urged by the bank that the defendants are jointly and severally liable for payment to the Bank on various grounds made in the plaint. Prior to the filing of the suit* admittedly, criminal complaint was filed by the plaintiff Bank against defendants Nos. 1, 2, 3 and 6 under Sections 407 and 420 IPC. After filing of the written statement the defendants moved an application u/s 151 of the CPC on 1st March, 1986, wherein it was stated that the Criminal Case No. 953/82, is pending in the court of First Judicial Magistrate, Indore on the same allegation, which are in the suit and in case, the suit is allowed to proceed, their defence will be prejudiced. The reply was filed by the plaintiff on 5th April, 1986. After hearing the parties, the trial court

found that allegations are common in the criminal complaint as well as in the suit. The court relying upon the case of the Apex Court in M.S. Sheriff Vs. The State of Madras and Others, , and on another case of this Court reported in Mohanlal v. Sheoram 1981 JLJ 24 after considering the pleadings of the parties and the submissions made in the suit held that if the civil suit is allowed to proceed the defendants, who are accused in the criminal proceedings will be prejudiced by disclosure of their defence.

2. Aggrieved by this order, the plaintiff Bank has come up before this Court in revision. The main contention of the Learned Counsel for the Banks is that as the written statement was filed the defence has already been disclosed, therefore no question of prejudice or embarrassment in facing the criminal trial arises. Shri Dave Learned Counsel for the Bank relied upon an unreported judgment of this Court delivered in Economic Packing v. Mount Metur Pharmaceuticals Civil Revision No. 27/86 decided on 9th March, 1987.

3. Shri Waghmare, Learned Counsel appearing for the non-applicant defendants; contended that in revision no interference is called for as the discretion has been exercised by the trial court judiciously after appreciating the pleadings, complaint and respective submissions by the parties before the trial court. Not only this, Learned Counsel for the parties agreed before the trial court that the grounds in criminal case as well as of the Civil Suit are the same. In the circumstances, his contention is that there is no difference in the facts constituting the causes of action for two different proceedings except one is for recovery of the amount and another is for punishing the defendants accused for the alleged offences said to have been committed by them. Learned Counsel placed reliance on the Apex court decision in Sherif"s case (suppa) and Mohan Lal"s case of this Court (supra). Besides, he also relied upon number of unreported judgments passed in civil Revision No. 298/86 Punjab National Bank v. Hardeo Motilal and Engg. decided on 9th Dec. 1986, Civil Revision No. 1170780 Mohanlal v. Sheoram decided on 16th January 1981; Civil Revision No. 369/80 Pralhad Singh and Anr. v. Anoopsing decided on 9th Feb. 1982 and Civil Revision No. 79/80 Nemichand s/o Shantilal v. Mahavir Kumar decide don 3rd Feb. 1981. By lending support from the various cases referred to above, Shri Waghmare, Learned Counsel submitted that filing of written statement is no bar for stay of trial of Civil Suit because the prejudice and embarrassment wilt arise at the time of cross-examination of the prosecution witnesses and while leading evidence in defence.

4. After hearing of the counsel of the both the parties, and on perusal of the record of the trial court, I am of the opinion that the revision deserves to be dismissed. The petitioner Bank has not come with the case that admission recorded by the trial court that the ground in both the cases i.e. in plaint in Civil Suit and in criminal complaint, are the same is incprrected. No ground has been raised either in the revision petition nor any affidavit has been filed by the counsel who argued the application. Hence, submission at this stage that grounds are not the same cannot be considered. (See case of Apex Court Gauri Shanker Vs. Hindustan Trust (Pvt.) Ltd. and Others, and the report of this Court

reported in Deendayyal v. Sitaram and Ors. 1982 JLJ 342. Besides, cause of action in both the cases, depends upon the Bills of exchange and delivery of goods fraudulently without payment. The remedies adopted are different. One remedy is for relation of money and the other is for punishment. It cannot be said by any stretch of imagination that the defendants will not face embarrassment or prejudice, during the trial particularly at the time of recording of evidence and defence. The case of M/s. Economic Packing Corpn. (supra) is of no help to the applicant Bank because the facts enumerated in the case are entirely different. There in a suit for recovery of the amount under Order 37 Rule 3 of the Code of Civil Procedure, leave to defend was sought by the defendant and thereafter, the defendant moved the application u/s 151, of the CPC for staying the proceeding of the Suit in view of the Criminal Proceedings pending against the defendant. After considering all the pleadings this Court held that causes of action in suit and in criminal case are different, and as such no prejudice or embarrassment is likely to be caused to the respondents in view of the admitted position of receipt of the goods.

5. The Apex court in the case of Sherif (supra) in para 15 and 16 of the judgment held that as between the civil and criminal proceedings the criminal matters should be given precedence. No hard and fast rule can be laid down the possibility of conflicting decisions in the civil and criminal courts is not a relevant consideration. The only relevant consideration is the likelihood of embarrassment. Another factor is that a civil suit often drags on for years and a criminal prosecution should not wait till everybody concerned has forgotten all about the crime. In particular cases also if the court finds expedient and just to say the civil suit considering the facts of both the cases and stage of the two proceedings. That apart, Sub-clause (3) of Article 20 of the Constitution of India provides that no person who is accused of an offence shall be subjected to any testimonial compulsion contesting the civil suit by offering oneself as a witness would virtually amount to such compulsion. The inference drawn by the trial court cannot be said to be perverse. Hence, also the order of the trial court is proper and does not call for interference in the revisional jurisdiction.

6. Considering the above considerations, pleadings, admission of the parties that grounds in both the cases are same, the trial Court rightly exercised the discretion and stayed the civil suit till the pendency of the criminal case. But, the order of the Trial Court, deserves a modification that the suit shall remain stayed till the decision of recording of evidence of prosecution and that of defence, thereafter, the suit shall proceed.

7. With these observations I do not feel it proper in the facts and in the facts and in the circumstances of the case, to interfere in the order impugned. At this stage, Shri Dave Learned Counsel states that the amount of the Bank will pile up, as such as order for its security is warranted. Suffice it to say that this is not the forum to pass any order for the security unless appropriate application is moved in the trial court and thereafter, an order is passed on by it by the said court.

8. The result is the revision is dismissed with no order as to costs.